No. 442

In the Supreme Court of the United States

OCTOBER TERM, 1952

THE UNITED STATES OF AMERICA, APPELLANT

v.

JAMES J. CARROLL

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The oral opinion of the District Court (R. 66-67) dismissing the indictment in case No. 18188 (which is the only one in which this appeal is presented) has not been reported.

JURISDICTION

The order of the District Court dismissing the indictment was entered on August 11, 1952 (R. 65, 76). The United States filed its notice of appeal to this Court on September 8, 1952 (R. 65, 77). The jurisdiction of this Court was invoked under the Criminal Appeals Act, 18 U. S. C. 3731. On September 23, 1952, appellee filed a statement opposing the jurisdiction of this Court as to the

first 45 counts, charging offenses during the year 1948 (R. 77). On December 15, 1952, this Court postponed further consideration of the question of jurisdiction to the hearing of the case on the merits (R. 78).

QUESTIONS PRESENTED

1. Whether this Court has jurisdiction to review the dismissal of the first 45 counts of the indictment, as to which, it is argued by appellee, the alternative ground of want of venue was a basis for the order of dismissal.

2. Section 147 (a) of the Internal Revenue Code requires anyone who pays to another person determinable profits or income in the amount of $600 or more during any taxable year to "render a true and accurate return" thereof to the Commissioner of Internal Revenue under such regulations as may be prescribed. Treasury regulations require each such payor to file a "return" for each payee on Treasury Form 1099, showing the total amount of the payments for the year and the name and address of the payee. The regulations further require that these forms be forwarded to the Commissioner, together with a transmittal Treasury Form 1096, showing the total number of "returns" on Form 1099. The question presented on the merits is whether, within the meaning of Section 145 (a) of the Internal Revenue Code, each Form 1099 is a "return", the making of which is "required by law or regulations made

under authority thereof", so that each willful failure to file such a form is a separate misdemeanor.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are set forth in Appendix A, *infra*, pp. 40–44.

STATEMENT

On December 14, 1951, two indictments, No. 18188 and No. 18189, were filed in the United States District Court for the Western District of Missouri, charging the appellee with violations of Section 145 (a) of the Internal Revenue Code (Appendix A, *infra*, p. 41) by numerous failures to file for the years 1948, 1949, and 1950 information returns required by Section 147 (a) and the regulations thereunder (R. 1–53). On August 11, 1952, the indictment in No. 18188 was dismissed as to all counts (R. 65). The Government has taken the present appeal solely from that order of dismissal (R. 75).

On the same day, August 11, 1952, one of the three counts in No. 18189 was also dismissed (R. 65). There was no appeal from that order, and trial on the other two counts of that indictment has been postponed pending the outcome of the present appeal. Appellee has, however, designated for inclusion in the record on this appeal a large part of the proceedings in No. 18189 to provide a basis for his contention that this Court

lacks jurisdiction to review directly the District Court's dismissal of the first 45 counts in No. 18188.

1. The returns which appellee allegedly willfully failed to file are required by Treasury Regulations 111, Section 29.147–1, to be filed on the following forms:[1]

Form 1099.—All persons are required by the regulations to file a return on this form in each instance in which they have, during the taxable year, made payments to another person of determinable income in excess of $600. The form contains space for the name and address of the payee, the name and address of the payor, and the amount of salaries, fees, interest, rents, dividends, annuities, and other determinable income paid over.

Form 1096.—This is a covering form which is used to summarize and transmit all the copies of Form 1099 which the payor files. It contains spaces only for the name and address of the payor, the number of Forms 1099 forwarded, and a declaration of the truth of the information submitted. It also contains instructions as to the preparation and filing of both forms. The reverse side, not material here, contains a statement relating to dividend distributions claimed to be nontaxable.

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[1] The regulation is set forth in Appendix A, *infra*, pp. 42–44. Copies of the two forms for the taxable year 1950 are reproduced in Appendix B, *infra*, pp. 45 and 47. The forms for 1948 and 1949 contain no material variations.

2. The proceedings in the District Court may be summarized as follows:

Case No. 18188.—In this case, which is the only one in which this appeal is presented and which, therefore, we think to be the only one properly before the Court, an indictment in 101 counts was returned against appellee charging failures to file information returns on Form 1099. Each count alleges that appellee made payment of a sum in excess of $600 to a named individual during a stated year; that appellee was required by the provisions of the Internal Revenue Code and the applicable Treasury Regulations to make a return, on or before February 15 of the following year, setting forth the amount of the payment and the name and address of the recipient; that the return was to be made to the Commissioner of Internal Revenue, Processing Division, Kansas City, Missouri; that the return was to be made on Treasury Form 1099; and that appellee willfully failed to make such a return. Counts 1 to 45, inclusive, allege payments during the calendar year 1948 (R. 1–21). Counts 46 to 81, inclusive, allege payments during 1949 (R. 21–37). And counts 82 to 101 allege payments in 1950 (R. 37–46).

On January 31, 1952, appellee filed a motion to dismiss the indictment (R. 53–58). Among numerous grounds advanced in support of the motion, the contention was made that the indict-

ment did not charge an offense because Treasury Form 1099 does not constitute a "return" within the meaning of the Internal Revenue Code (R. 58). On August 11, 1952, a supplemental motion to dismiss was filed in which it was contended that the District Court had no jurisdiction over the first 45 counts of the indictment (covering returns for the year 1948, due to be filed on or before February 15, 1949) for the reason that the Treasury Regulations in effect on February 15, 1949, required that returns of information be filed in New York City rather than in Kansas City as alleged in the indictment (R. 63–64).

The indictment was dismissed by the District Court on August 11, 1952, and an order was entered discharging appellee and exonerating his bond (R. 65, 67). In its oral opinion (R. 66–67), the court stated as the single ground for its order of dismissal that Congress, in enacting Section 147 (a) of the Internal Revenue Code, intended to require the filing of only one yearly return showing the names of all persons to whom payments in excess of $600 had been made; that Form 1099, the individual information form, is not the return contemplated by the statute; that only the transmittal form, 1096, is the return required by the statute; and that, consequently, the indictment in this case, charging failures to file Form 1099, failed to allege any failure to file a "return" under Section 145 (a) of the Code, thus stating no offense. Summarizing these views, the court said (R. 67):

> I think that the failure to file each item, that is as in this case it is alleged—or whether it is alleged or not, it is common knowledge—that it is the charge that the money paid here went to persons who had won in games of chance [2] and there were a great many of them, and it is the Court's thought that each one of those does not constitute a separate offense, but that all of them should have been included in Form 1096.

Case No. 18189.—The indictment in this case, involved in this appeal only as a basis for appellee's jurisdictional argument as to the first 45 counts in Case No. 18188, contains three counts (R. 47–53). The first count (R. 47–49) alleges that during the calendar year 1948 appellee paid to 45 named persons sums in excess of $600; that appellee was required, by the provisions of the Internal Revenue Code and the applicable Treasury Regulations, to make a return on Treasury Form 1096, on or before February 15, 1949, setting forth the number of returns on Treasury Form 1099 attached thereto; that this return was to be made to the Commissioner in Kansas City; and that appellee had willfully failed to make such a return. The second count (R. 49–51) alleges payments in excess of $600 to 36 named individuals during 1949 and a willful failure to file a return on Treasury Form 1096 on or before

[2] Defense counsel conceded that this was a proper assumption (R. 71–72).

February 15, 1950. The third count (R. 51–53) alleges similar payments to 20 individuals [3] during 1950 and a similar default as to Form 1096.

As in Case No. 18188, a motion to dismiss this second indictment was filed on January 31, 1952 (R. 58–63), in which it was urged *inter alia* that Treasury Form 1096 was likewise not a "return" within the meaning of Section 145 (a) of the Internal Revenue Code (R. 63). And a supplemental motion, similar to that filed in No. 18188, sought dismissal of the first count of this indictment on the ground that returns for 1948 were to be made in New York City rather than in Kansas City (R. 64).

The court dismissed the first count on the ground of improper venue, holding that, since the regulations in effect on the due date for 1948 returns required filing in New York City, prosecution would not lie in the Western District of Missouri, which includes Kansas City (R. 69). The other two counts were upheld, and an appropriate order was entered on August 11, 1952 (R. 65). There was no appeal, and the case is still pending in the District Court.

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In holding that Section 147 (a) of the Internal Revenue Code requires persons making

[3] It will be noted that the names of the payees and the amounts paid as alleged in Case No. 18188 correspond with the allegations in Case No. 18189.

payments to another of determinable income in excess of $600 during a taxable year to make only a single information return, regardless of the number of recipients of such payments.

2. In holding that a willful failure to file a return on Form 1099, as required by Treasury Regulations 111, Section 29.147–1, is not a misdemeanor under Section 145 (a) of the Internal Revenue Code.

3. In granting the motion to dismiss the indictment.

SUMMARY OF ARGUMENT

I

The only ground for dismissal of the indictment involved in this appeal was the District Court's ruling that Treasury Form 1099 is not a "return" and that the willful failure to file such a form is not, therefore, the willful failure to file a return denounced as a misdemeanor by Section 145 (a) of the Internal Revenue Code. The record does not sustain appellee's claim that the additional ground of want of venue was reached by the District Court in dismissing the first 45 counts of the indictment.

Accordingly, as to the first 45 counts as well as the remainder of the indictment (regarding which no jurisdictional issue is or could be raised), only the single question of statutory construction is presented. The venue problem could not properly have been raised by the Government, and it has not

been assigned as error. Nor is it open to appellee as a basis for sustaining the dismissal of the first 45 counts. *United States* v. *Borden Co.*, 308 U. S. 188, 193; *United States* v. *Beacon Brass Co.*, 344 U. S. 43, 47.

II

Each Form 1099 is a "return" required by Section 147 (a) of the Internal Revenue Code and the clearly appropriate Treasury Regulations thereunder. This is evident from the statutory language itself, from the obvious purpose of obtaining separate information as to each individual payee and potential taxpayer, and from the unambiguous terms of the administrative regulations which have not only been approved by repeated reenactments of the statute, but have been in effect extended to closely related provisions of the Code by subsequent legislation.

1. Section 147 (a) is phrased in terms of a "return" for each "recipient" of payments of $600 or more. Brief reflection makes plain the necessity for such a requirement. Apparent from the face of the statute—and, in any event, made explicit by the legislative history—the purpose of the provision which is now found in Section 147 (a) of the Code is to obtain information as to possibly delinquent payee-taxpayers. This purpose can only be served by a system of separate returns for separate payees which makes feasible the essential task of filing and checking.

2. Over 35 years ago, when the substantially identical predecessor of Section 147 (a) was adopted, the Treasury promulgated regulations which left no room for denying that a separate return on Form 1099 was required for each payee. The prescribed Form 1099 is the only one which provides the information called for by the statute. It is, therefore, the only form in existence which can properly be described as a "return" within the statute. Cf. *Florsheim Bros. Co.* v. *United States*, 280 U. S. 453.

This conclusion is unshaken by the fact that the Treasury has prescribed a transmittal form—Form 1096—to which the Forms 1099 for any year are to be attached and which is to show "the number of returns filed" on Forms 1099. The transmittal form serves the obvious purposes of convenience and double-checking. But if the Treasury had designed no such device—if it had simply permitted the Forms 1099 to be forwarded separately and at various times—the situation would be no different in essence. The individual information returns on Form 1099 would be, as they now are, separate returns.

3. The Treasury's regulations, requiring a separate return for each payee, have been approved by repeated reenactments of the statute without material amendments. If anything, the amendments, by consistently keeping the minimum amount of payments requiring an information

return the same as the amount requiring the filing of an individual income tax return, have reflected the continuing awareness of Congress that each information return was designed as a check upon an individual recipient of income.

Far more significantly, in providing in subsequent legislation for withholding of income taxes by employers and for the furnishing to each employee of a withholding statement (showing the employee's name, his address, and the amount of income paid to him), Congress has provided that a copy of such an individual withholding statement may be filed as "the return required" under Section 147 of the Code. Section 1633 (b), Internal Revenue Code. This is a striking affirmation of the view of Congress that *the return* required by Section 147 (a) is a return as to an individual payee.

Moreover, Congress has provided for separate punishment as a misdemeanor for each willful failure to supply an employee with a withholding statement. Section 1626 (a), Internal Revenue Code. And the legislative history of this provision shows that it was adapted as an analogue from the corresponding provision in Section 145 (a) punishing the failure to file the corresponding return with the Government.

4. Because each Form 1099 is a "return" within the income tax law and regulations, it necessarily follows that each failure to file such a return is a misdemeanor under Section 145 (a), for the terms of that section make clear that any single failure to file any single return constitutes the offense.

Congress has frequently provided for similar separate units of prosecution. Thus, under a statute making it unlawful to "sell" narcotics, two sales to the same buyer constitute two offenses. *Blockburger* v. *United States,* 284 U. S. 299. Similarly, a statute punishing the cutting of "any mail bag" defines as six offenses the cutting of six mail bags at the same time. *Ebeling* v. *Morgan,* 237 U. S. 625. While considerations relevant in fixing sentences may lead to the conclusion that 101 willfully neglected returns should not be assessed mechanically at 101 times the weight of one, the problem of determining an appropriate punishment cannot be avoided in a case of this type "by judicial legislation under the guise of construction." *Blockburger* v. *United States, supra,* at 305. Congress has defined as separate offenses the failures to file individual returns with which the appellee is charged. We submit that this mandate is controlling here.

ARGUMENT

I

THIS COURT HAS JURISDICTION TO REVIEW THE DISMISSAL OF THE ENTIRE INDICTMENT. THE DISMISSAL AS TO ALL COUNTS WAS BASED ON THE SINGLE GROUND THAT NONE OF THEM STATED AN OFFENSE WITHIN SECTION 145 (A) OF THE INTERNAL REVENUE CODE

The Criminal Appeals Act, 18 U. S. C. 3731 (Appendix A, *infra*, p. 40), gives to the United States the right to appeal directly to this Court where the dismissal of an indictment, or any count thereof, is "based upon the * * * construction of the statute upon which the indictment * * * is founded." In the present case, it is necessarily conceded that, insofar as it rests upon the single ground that a failure to file a return on Treasury Form 1099 does not constitute an offense within Section 145 (a) of the Internal Revenue Code, the District Court's order of dismissal is reviewable directly by this Court. Since it is not contended that the dismissal of counts 46 through 101 of the indictment rested upon any other ground, the jurisdiction of this Court to review the dismissal of these counts is undisputed. *United States* v. *Rosenwasser*, 323 U. S. 360, 361; *United States* v. *Foster*, 233 U. S. 515, 522–523.

Appellee contends, however, in his Statement Opposing Jurisdiction that, as to counts 1 through 45 of the indictment, this Court lacks jurisdiction because the District Court's order of

dismissal was based not only upon a construction of the statute, but also upon the additional and independent ground of improper venue. We think the record shows clearly that the one ground of statutory construction presented by the Government's appeal was the sole basis for dismissal of all counts of the indictment involved in this case. The question of venue was not reached by the District Court in this case.

The District Court's complete statement of its grounds for dismissing the indictment in Case No. 18188, the case in which this appeal is prosecuted, begins on page 66 of the record and concludes at the end of the fourth full paragraph on page 67 with "the ruling of the Court that the *Motion to Dismiss as to 18,188 will be sustained.*" The court ruled, in short, that Form 1099 is not a return the failure to file which violates Section 145 (a). The next paragraph of the court's oral opinion begins, "We next come to 18,189." Thereafter, the District Court confined its discussion to the latter case, and made no further reference to No. 18188.

Appellee argues, however, that the dismissal for want of venue of the first count of No. 18189 governs as well the first 45 counts of No. 18188 and must be deemed an additional ground for the dismissal of these latter counts. The argument runs as follows: On February 15, 1949, the due date for 1948 returns on Forms 1096 and 1099,

the regulation provided for filing with the Processing Division in New York City. T. D. 5313, 1944 Cum. Bull. 308. On February 16, 1949, an amendment was approved requiring that the returns be filed with the Processing Division in Kansas City. T. D. 5687, 1949–1 Cum. Bull. 9. This amendment appeared in the Federal Register on February 24, 1949. 14 Fed. Reg. 826. However, the argument continues, since the published regulations in effect on February 15 required filing in New York City, venue for prosecution for failure to file the 1948 returns lies in New York rather than in Missouri where both indictments against appellee were returned.

There is no doubt that this argument was adopted by the District Court as its ground for dismissing the first count of the indictment in No. 18189, the case which is not before this Court on this appeal (R. 69). Moreover, the court *could* have based its dismissal of the first 45 counts in No. 18188 on the same ground. But it did not do so; this particular ground of decision was not even mentioned by the District Court in connection with the dismissal of the indictment in No. 18188. Nor was there any reference back to No. 18188 in the portion of the District Court's statement dealing with No. 18189.

Although the ruling as to venue would have been reviewable by this Court had it been made in

this case,[4] contrary to appellee's view that such a ruling is not a ground for direct appeal, no error as to any such ruling has been assigned. (Nor has the Government appealed from the dismissal of the first count of No. 18189.) The question of venue, undetermined in this case by the court below and in any event not specified in the assignment of errors, is therefore not before this Court.

We recognize, of course, that if this Court should reverse and reinstate the indictment, the first 45 counts will almost certainly be dismissed by the District Court on the venue point the appellee raises. But this does not mean that the Government could have presented the question on the appeal in this case. For the point was not passed upon in this case, and the Criminal Appeals Act does not permit appeals to this Court to present issues not the basis for the District Court's decision.

It is equally clear that the point is not open to appellee as a ground for sustaining the order of dismissal as to the first 45 counts. "When the District Court has rested its decision upon the construction of the underlying statute this Court is not at liberty to go beyond the

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[4] Cf. *United States* v. *Lombardo*, 241 U. S. 73; *United States* v. *Johnson*, 323 U. S. 273; *United States* v. *Anderson*, 328 U. S. 699; *United States* v. *Wilson*, Nos. 197 and 198, this Term, decided February 2, 1953.

question of the correctness of that construction and consider other objections to the indictment. The Government's appeal does not open the whole case." *United States* v. *Borden Co.*, 308 U. S. 188, 193. See to the same effect, *United States* v. *Beacon Brass Co.*, 344 U. S. 43, 47; *United States* v. *Petrillo*, 332 U. S. 1, 5; *United States* v. *Classic*, 313 U. S. 299, 309; *United States* v. *Hastings*, 296 U. S. 188, 192; *United States* v. *Keitel*, 211 U. S. 370, 398.

II

SECTION 147 (A) OF THE INTERNAL REVENUE CODE AND THE TREASURY REGULATIONS ADOPTED PURSUANT THERETO REQUIRE A SEPARATE INFORMATION RETURN ON TREASURY FORM 1099 FOR EACH PAYEE OF $600 OR MORE DURING A TAXABLE YEAR. EACH WILLFUL FAILURE TO FILE SUCH A RETURN CONSTITUTES A SEPARATE MISDEMEANOR UNDER SECTION 145 (A) OF THE CODE

The language, the purpose, and the history of Section 147 (a) make it clear that Congress required a separate information return, as to each payee and potential taxpayer, from persons making payments of $600 or more to other individuals during the taxable year. If the statute left any doubt of this requirement, the doubt would disappear in view of the unambiguous Treasury Regulations which have implemented Section 147 (a) and substantially identical predecessor statutes dating back to the Revenue Act of 1917. Congress has not only approved these regulations in repeated reenactments of the statute;

it has gone further and, by allowing an individual withholding statement to serve as *the return* required by Section 147 (a), has affirmatively reemphasized its command that a separate return is required for each payee.

We shall show here that each completed Treasury Form 1099 constitutes a "return" required by Section 147 (a) of the Code. Because this is so, and because Section 145 (a) of the Code makes it a misdemeanor willfully to fail to file a return required under the income tax laws, we submit that the District Court erred in dismissing the indictment.

1. Section 147 (a) of the Code (Appendix A, *infra*, pp. 41–42) provides in pertinent part that

> All persons * * * making payment to another person, of * * * fixed or determinable gains, profits, and income * * * of $600 or more in any taxable year * * * shall render a true and accurate return to the Commissioner, * * * setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

This language plainly contemplates the filing of an individual information return for each individual payee. A return is required wherever payments exceeding the stated minimum have been made to "another person * * *." And the contents of the return are similarly defined in terms of the individual payee; the return is

to state the amount of the payments for the taxable year "and the name and address of *the recipient* of such payment." Had Congress intended that only a single return covering all payees should be required, it could easily have stated that intention by changing five words from the singular to the plural. Congress could have said: "All persons * * * making payment to other persons * * * shall render a return * * * setting forth the amounts * * * and the names and addresses of the recipients * * *."

Instead, Congress chose language aptly suited to the informational purpose for which returns under Section 147 (a) were designed. As the court below recognized (R. 69), this obvious purpose is to provide a means of locating and checking upon recipients of income and the amounts of income they receive. While the source of the return is the payor, the object of the return is the acquisition of information regarding the individual payee or payees. Clear enough on the face of the statute, this object was explicitly emphasized by the authors of the provision in the Revenue Act of 1916[5] which was to be followed by a series of substantially identical (at least for present purposes) successor statutes culminating in what is now Section 147 (a) of the Code. Speaking of this provision (which replaced a withholding requirement contained in

[5] Section 28, Revenue Act of 1916, c. 463, 39 Stat. 756, added by Section 1211, Revenue Act of 1917, c. 63, 40 Stat. 300, 337.

the original income tax law), the Senate Committee on Finance recommended (S. Rep. No. 103, 65th Cong., 1st sess., 20, 1939–1 Cum. Bull. (Pt. 2) 56, 67–68):

> * * * That the provisions of the law requiring withholding at the source of the tax due on profits or incomes of resident taxable persons be repealed and instead there be substituted "information at the source," where the amount of income received in any taxable year and paid over to the taxable person exceeds $800 for any taxable year. * * * The proposed amendment is conducive to a more effective administration of the law in that it will enable the Government to locate more effectively all individuals subject to the income tax and to determine more accurately their tax liability. This is of prime importance from a viewpoint of collections. * * *
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> It is the Treasury Department's judgment, based upon close observation and study of the practical workings of the withholding feature of the income-tax law as well as of the general requirements of administration, that information at the source is a foundation upon which the administrative structure must be built if the income-tax law is to be rendered most effective and if due regard is to be paid to economy and simplicity of administration and to the imposition of no greater burden and expense upon taxpayers than is necessary for effective administration.

Adopting this recommendation and creating the requirement which now appears in Section 147 (a) of the Code, Congress inaugurated an administrative scheme in which it is essential, if the statutory purpose is to be served, that individual returns supply the information as to individual payees. As will become clearer below (pp. 24, 26), the "physical task of handling and verifying returns" (*Commissioner* v. *Lane-Wells Co.*, 321 U. S. 219, 223) of the type involved here plainly and imperatively demands such separation. We submit, therefore, that if there were nothing more than the bare statutory language, speaking in terms of "a return" for each "recipient" of payments, there would be ample reason for concluding that the language means what it says. But there is, in addition, over 35 years of administrative practice—ratified and adopted by Congress in closely related provisions of the income-tax laws—which makes clear beyond doubt the propriety of this conclusion.

2. Implementing the provision of the Revenue Act of 1917 which is now Section 147 (a) of the Code, the Commissioner of Internal Revenue, on January 2, 1918, promulgated Article 34 of Treasury Regulations 33. This Article required the filing of information returns, on Forms 1099, setting forth the amount of reportable gains, profits and income and the names and addresses of the recipients of such income. It went on to direct that these returns should be "accompanied

by a letter of transmittal, under oath (Form 1096), *which will show the number of returns filed* and the aggregate amount represented by the payments." (Emphasis added.)

Today, continuously unchanged in any presently material respect—prescribing even the same form numbers for forms which are substantially unaltered[6]—Treasury Regulations 111, Section 29.147–1, as amended by T. D. 5687, 1949–1 Cum. Bull. 9, promulgated under Section 147 (a) of the Code,[7] provides:

> * * * All persons making payment to *another person* of fixed or determinable income * * * of $600 or more * * * must render *a return* thereof * * *. *A return shall be made in each case on Form 1099,* accompanied by transmittal Form 1096 showing *the number of returns filed* * * *. The street and number where the recipient of the payment lives should be stated * * *. [Emphasis added.]

These regulations leave no room to question that a separate return is required (on Form 1099) for each individual payee. Indeed, it is clear from the regulations and the forms they prescribe that unless the individual Form 1099 is the return re-

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[6] Compare, for example, the Forms 1099 for 1918 and 1950, both reproduced in Appendix B, *infra*, pp. 45 and 46.

[7] In addition to the specific authority contained in Section 147 (a), the Commissioner has general power to prescribe all needful regulations under Section 62 of the Internal Revenue Code.

quired by Section 147 (a) of the Code, no form of return is anywhere provided on which to supply the information Congress demanded.

Section 147 (a) directs the payor required to make a return to supply the name and address of the recipient and the amount of the payments the latter has received. Precisely this information is called for by individual Form 1099 (Appendix B, *infra*, p. 45). See *McDonough* v. *Lambert*, 94 F. 2d 838, 841 (C. A. 1) (the information required is to be "given on form 1099 provided by the Treasury Department and in compliance with section 147 (a)"). And it is called for nowhere else. The transmittal form, 1096 (Appendix B, *infra*, p. 47), employed to show "the number of returns filed", supplies this information and nothing more. It does not give the name and address of any individual recipient or the amounts paid each. It bears no resemblance to the kind of "return" required by Section 147 (a) of the Code.

If it required a precedent, the fact that the nature of a "return" is to be defined in terms of the purpose and information it is to supply would be amply demonstrated by this Court's decision in *Florsheim Bros. Co.* v. *United States*, 280 U. S. 453. There, rejecting a contention that a so-called "tentative return," prescribed for a special occasion by the Commissioner, should be viewed as the ordinary completed return for the purpose

of starting the period of limitation against an additional assessment, this Court made clear that "the return required to satisfy the statute" (p. 460) is nothing more or less than a presentation of the data the statute seeks. This single possible definition of what constitutes a return points unmistakably in the present case to the individual information return on Treasury Form 1099.

The problem would be superficially simpler, perhaps, if the Treasury had prescribed no form other than the individual Form 1099. The Treasury could merely have designed this single form and could have omitted the requirement that the individual returns be submitted together, summarized as to number, and certified on a single transmittal form. It would then be clear beyond any question that a person failing to file a Form 1099 in circumstances calling for such filing would be guilty of the offense of failing to "make a return" which was "required by law or regulations made under authority thereof * * *." Section 145 (a), Internal Revenue Code, Appendix A, *infra*, p. 41. But the situation is in no way altered, we think, by the fact that obvious considerations of efficiency and thoroughness have led to the requirement that all returns on Forms 1099 be forwarded together, attached to a single transmittal form. The decisive point remains that each Form 1099 is a return—and the only suffi-

cient return—required by Section 147 (a) of the Code.[8]

The individual role of each Form 1099—the fact that each form serves the separate purpose of supplying information as to the individual payee—is clearly illustrated by the use to which these forms are put by the Bureau of Internal Revenue. Upon receipt at the central Processing Branch, Kansas City, Missouri, the individual Forms 1099 are alphabetized by collection districts and then forwarded to the appropriate collector's office on or before June 30 of the year following the year to which they apply. In the collector's office, these returns are associated with and checked against the tax returns of payee-taxpayers. In addition, they are employed as a means of discovering cases where tax returns should be, but have not been, filed. They serve, in short, as they were obviously intended to serve, as a means of unearthing delinquent taxes and taxpayers.[9]

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[8] This does not suggest, of course, that the transmittal form, 1096, which is also denominated a "return," could be deemed to be unauthorized. Given the general power to prescribe necessary regulations (Section 62 of the Code) and the plain utility and propriety of employing a transmittal form with which to forward all returns, Form 1096 is, we think, a clearly authorized requirement. Cf. *Commissioner* v. *Lane-Wells Co.*, 321 U. S. 219.

[9] Some indication of the importance of these information returns may be gleaned from the number filed during the years involved in the present prosecution:

	Forms 1096	Forms 1099
1948	235,866	12,279,378
1949	238,696	13,831,632
1950	245,825	15,251,043

To this end, each Form 1099, relating to each individual payee, is of separate, independent significance. Each failure to file such a form serves as a defeat, complete in itself, of the objective sought by Section 147 (a) of the Code as implemented by the Treasury's regulations.

3. Beginning with their contemporaneous adoption over 35 years ago following enactment of the predecessor of Section 147 (a), the administrative regulations and practice we have described, requiring a separate information return for each payee, have remained in force with no change which is significant here. During the same period, repeated reenactments of the statute have continued, without the slightest material variation, the language upon which the Treasury's uniform regulations have been based. These circumstances, particularly in view of the obvious literal justification in the statute for the administrative regulations, afford clear warrant for applying the settled rule that "Treasury regulations and interpretations long continued without substantial change, applying to unamended or substantially reenacted statutes, are deemed to have received congressional approval and have the effect of law." *Helvering* v. *Winmill*, 305 U. S. 79, 83. See also *Commissioner* v. *Munter*, 331 U. S. 210, 215; *Crane* v. *Commissioner*, 331 U. S. 1, 8; *Commissioner* v. *Flowers*, 326 U. S. 465, 469; *Bochm* v. *Commissioner*, 326 U. S. 287, 291–292; *Douglas* v. *Commissioner*, 322 U. S. 275, 281.

But Congress has done more than thus evidencing its tacit approval of the regulations by reenactments of the statute. To begin with, these reenactments themselves contain some affirmative demonstration of Congress' continuing awareness that the returns in question were designed to provide a check upon individual recipients of income. Each time there has been a change in the minimum amount of income required for the filing of an income tax return, Congress has correspondingly changed the minimum amount of payments to an individual recipient for which an information return is required.[10]

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[10] When the provision for information at the source was first enacted in 1917, it provided for returns as to each person to whom payments had been made in excess of $800. At that time, the minimum requirement for filing an individual income tax return was $3,000. However, in the Revenue Act of 1918 the two amounts were both changed to $1,000, and this conformity has been maintained in all subsequent amendments. Compare Sections 8 and 28 (added by War Revenue Act of 1917), Revenue Act of 1916, 39 Stat. 761, 40 Stat. 337; Sections 223 and 256, Revenue Act of 1918, 40 Stat. 1074, 1086; Sections 223 (a) and 256, Revenue Act of 1926, 44 Stat. 37, 50; Sections 51 (a) and 148 (a), Revenue Act of 1928, 45 Stat. 807, 836; Sections 51 (a) and 147 (a), Revenue Act of 1932, 47 Stat. 188, 218; Sections 51 (a) and 147 (a), Revenue Act of 1938, 52 Stat. 476, 515; Sections 51 (a) and 147 (a), Internal Revenue Code, 53 Stat. 27, 64; Sections 7 (a) and 7 (c), Revenue Act of 1940, 54 Stat. 519, 520; Sections 112 (a) and 112 (c), Revenue Act of 1941, 55 Stat. 696, 697; Sections 214 (c) (1) and 214 (c) (3), Revenue Act of 1942, 56 Stat. 828; Sections 202 (c) (1) and 202 (c) (3), Revenue Act of 1948, 62 Stat. 114.

Far more significantly, Congress has, in a related provision of the Internal Revenue Code, explicitly recognized and incorporated the requirement that a separate information return is required for each payee. Under the social security provisions of the Code (Sections 1400–1401) and the provisions for withholding of income taxes (Sections 1622–1623), employers are required to deduct taxes from the wages of their employees. Section 1633 (a) of the Code (added by Section 206 (a) of the Social Security Act Amendments of 1950, c. 809, 64 Stat. 477, 537) provides that any employer required to deduct and withhold such taxes from an employee "shall furnish to *each* such employee * * * a written statement", showing the name of the employer, the name of the employee, the amount of wages paid, and the amount of tax withheld. This, with the addition of the withholding tax, is the same information as that required to be furnished on Form 1099 under Section 147 (a). Congress, therefore, went on in Section 1633 (b) to provide that:

> A duplicate of any such statement if made and filed in accordance with regulations prescribed by the Commissioner with the approval of the Secretary shall constitute *the return required* to be made in respect of such remuneration *under section 147*. [Emphasis added.]

Here, we submit, is striking affirmation of the view Congress has evidenced by repeated reenactments of the statute—the view that *the return* required by Section 147 (*a*) is a return of information as to the individual payee.[11]

Recognizing the separate, individual character of each withholding statement furnished by an employer *to an employee*—the duplicate of which serves as the return under Section 147 (a)—Congress has provided in Section 1626 (*a*) of the Code that "any person required * * * to furnish [such] a statement [to an employee] * * * who willfully fails to furnish a statement in the manner, at the time, and showing the information required * * *, shall *for each such failure*, upon conviction thereof be fined not more than $1,000, or imprisoned for not more than one year, or both." [Emphasis added.][12] It would be at least somewhat anomalous if there were no comparable sanction against failure to supply *the Government* with the individual reports of information contained in these

[11] Adapting its established practice for information returns under Section 147 (a) to the case of employees whose taxes are withheld and for whom withholding statements are filed, the Treasury requires that copies of the individual withholding statements (Form W–2a), substituting for the individual returns on Form 1099, be transmitted, together with a "reconciliation form" (W–3) which lists the number of statements forwarded and the total of taxes withheld—an obvious counterpart of the Form 1096 required under Section 147 (a). Treasury Regulations 116, Section 405.601.

[12] Section 1626 (*b*) imposes, in addition, "for each such failure * * * a civil penalty of not more than $50."

statements. But Congress made it clear, we think, that the penal provisions of Section 145 provided comparable, and more severe, punishments for "each * * * failure" to transmit a withholding statement—functioning as a "return" under Section 147 (a)—to the Government.

The penalty in Section 1626 (a) of the Code for failing to furnish an employee with a withholding statement (enacted by Section 2 (a) of the Current Tax Payment Act of 1943, c. 120, 57 Stat. 126, 137) is a substantial duplicate of the provision enacted by Section 172 of the Revenue Act of 1942, which imposed a "victory tax" and created a system of withholding and receipts.[13] H. Rep. No. 401, 78th Cong., 1st Sess., p. 32; S. Rep. No. 221, 78th Cong., 1st Sess., p. 30. Reporting the 1942 provision, both the House and Senate Committees said (H. Rep. No. 2333, 77th Cong., 2d Sess., p. 132; S. Rep. No. 1631, 77th Cong., 2d Sess., p. 172):[14]

> Section 470 provides criminal and civil penalties for the willful failure of any em-

[13] Section 172 of the Revenue Act of 1942 (c. 619, 56 Stat. 798, 884) added to the Internal Revenue Code "Subchapter D—Victory Tax on Individuals," consisting of Code Sections 450–456, 465–470, 475, and 476. The penalty provision to which we refer was contained in added Section 470 (a) of the Code. The Victory Tax subchapter was repealed by Section 6 of the Individual Income Tax Act of 1944, c. 210, 58 Stat. 231, 234.

[14] Our quotation is from the Senate Report, the language of which differed in only one or two trivial respects from that of the House.

> ployer to furnish a receipt to the employee showing the information required * * *. The criminal penalty is a fine of not more than $1,000 or imprisonment for not more than 1 year, or both * * *. *These penalties are prescribed in lieu of the penalty imposed by section 145 of the Code, and are much less severe than those displaced.* [Emphasis added.] [15]

This history adds strikingly to the already clear reasons for treating each information return as a separate requirement and each failure to file such a return as a separate offense. Punishable by a penalty "prescribed in lieu of the penalty imposed by section 145 of the Code," the willful failure to supply an individual employee with a withholding statement is clearly a completed offense. A copy of this statement is, as to the Government, a "return" required by Section 147 (a). The penalty provisions of Section 145 (a) would probably have been inapplicable for failure to furnish statements required to be furnished to employees, and were appropriately "displaced" as to such statements by the special

[15] While the criminal penalty to which the Committees referred is not "much less severe" for *failure* to supply a statement (Section 145 (a) provides for a maximum of one year's imprisonment, a *$10,000* fine, or both), this is certainly so with respect to false statements, for false returns were expressly made punishable as perjury under Section 145 (c) of the Code (bearing a penalty of a maximum imprisonment of five years and a $2,000 fine) at the time of the legislation considered here.

provisions now found in Section 1626 (a) of the Code.[16] But Section 145 (a) relates precisely to "returns" and is clearly at the center of the scheme of punishment to which Section 1626 (a) is a specific addition. Like the provisions to which it corresponds for a willful failure to supply a statement to an individual employee, Section 145 (a) punishes each failure to supply the Government with the corresponding information return.

4. We think the preceding discussion lays bare the error of the District Court. Section 145 (a) of the Internal Revenue Code (Appendix B, *infra*, p. 41) punishes

> Any person required * * * to make a return * * * who willfully fails to * * * make such return * * *.

It can scarcely be doubted—and the decision below suggests no doubt—that any willful failure to file any single return constitutes the offense denounced by Section 145 (a). The District Court held, however (R. 66–67), that only one annual return is required under Section 147 (a); that Form 1099 is not that return; and that a willful default with regard to Form 1099 is not a misdemeanor. But this conclusion is refuted by the statutory language, the regulations, and the history reviewed above.

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[16] In decreasing the severity of the latter penalty, Congress may well have been of the view that a somewhat lighter punishment should apply where the willful default was against an employee rather than against the Government.

The test of the allowable unit of prosecution under any penal statute has been stated in *Blockburger* v. *United States,* 284 U. S. 299, 302, where, adopting Wharton's definition, this Court said:

> * * * The test is whether the individual acts are prohibited, or the course of action which they constitute. If the former, then each act is punishable separately * * *. If the latter, there can be but one penalty.

Thus, in *In re Snow,* 120 U. S. 274, where the statute merely penalized cohabitation with more than one woman, this Court held that there could be only one offense where there was continuous cohabitation for nearly three years with the same seven participants. The statute did not specify any less continuous act, any definite number of women, or any definite period of time.

On the other hand, under a statute making it unlawful to "sell" narcotics, two sales by the same seller to the same buyer were held to constitute two separate offenses, though one closely followed the other in time. *Blockburger* v. *United States,* 284 U. S. 299. Similarly, in *Ebeling* v. *Morgan,* 237 U. S. 625, it was held that under a statute punishing a person who shall cut "any mail bag," the cutting of six mail bags at the same time constituted six separate offenses. This Court said (p. 629):

> [The statutory] words plainly indicate that it was the intention of the lawmakers to protect each and every mail bag from

> felonious injury and mutilation. Whenever any one mail bag is thus torn, cut or injured, the offense is complete. * * * The offense as to each separate bag was complete when that bag was cut, irrespective of any attack upon, or mutilation of, any other bag.[17]

See also *United States ex rel. Marcus* v. *Hess*, 317 U. S. 537, 552; *Korematsu* v. *United States*, 323 U. S. 214, 222.

And so here, the words of Section 145 (a) "plainly indicate that it was the intention of the lawmakers" to punish "each and every" failure to file any single return required by law or appropriate regulations. Cf. *Beam* v. *Hamilton*, 289 Fed. 9 (C. A. 6). It follows necessarily, therefore, that since each individual Form 1099 is a separate information "return" required by Section 147 (a) of the Code and the Treasury's appropriate regulations thereunder, each failure to file such a return violates Section 145 (a).

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[17] In the same way, under the mail fraud statute, punishing one who, in furtherance of a scheme to defraud, places "any letter or packet in any post office," each mailing is a separate crime although in furtherance of the same scheme. *Badders* v. *United States*, 240 U. S. 391, 394; *In re De Barq*, 179 U. S. 316, 320; *In re Henry*, 123 U. S. 372, 374. And falsifications of record entries have repeatedly been held to constitute separate offenses to the extent of the number of transactions falsified. *Berg* v. *United States*, 176 F. 2d 122, 125–126 (C. A. 9), certiorari denied, 338 U. S. 876; *Bower* v. *United States*, 296 Fed. 694, 695–696 (C. A. 9), certiorari denied, 266 U. S. 601; *United States* v. *Berry*, 96 Fed. 842, 844 (W. D. Va.).

There is nothing new or startling, of course, in the requirement of more than one annual return from any individual. To cite only one example, anyone acting as a fiduciary or trustee must, in addition to his own individual return, file separate returns for each of the trusts which he administers. 26 U. S. C. 142. This, obviously, may entail the filing of dozens or hundreds of separate returns by individuals or corporations whose business it is to act as fiduciaries. Moreover, the requirement of more than one separate return may properly be imposed under the broad power to prescribe administrative regulations where such a requirement furthers the purpose of obtaining tax information "with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished." *Commissioner* v. *Lane-Wells Co.*, 321 U. S. 219, 223. In the present case, the requirement is found in the statute itself—and the regulations making the requirement unmistakable are clearly necessary to render feasible the task of checking and verification for which individual information returns are designed.

It was for Congress to determine whether a separate information return should or could be required for each payee. Since Congress has so provided, 101 willfully neglected information returns—like 101 cut mail bags or 101 unlawful sales or 101 unlawfully mailed letters—constitute 101

offenses. If it seems harsh that each willful failure to file a return is a crime, "the remedy must be afforded by act of Congress, not by judicial legislation under the guise of construction." *Blockburger* v. *United States*, 284 U. S. 299, 305. But it should be observed, even on the level of legislative judgment, that 101 willful nondisclosures of the information Congress demanded as to individual payees are in fact a multiplication of the kind of evil Section 145 (a) of the Internal Revenue Code was designed to prevent. It does not follow, of course, that the multiplier—applying to a single one of the many factors affecting the imposition of criminal punishment—should or will be adapted mechanically to the delicate, discretionary task of adjudging the penalty to which the appellee should be subjected if he is guilty. Such a consideration, which may well underlie what is, in our view, the District Judge's untenable conclusion, may properly be brought to bear in passing sentence. However this may be, we think the relevant statutes leave no ground for avoiding the problem by holding that Form 1099 is not a return at all. But this untenable premise is the only way of avoiding the conclusion, which is decisive in this case, that 101 such forms are 101 returns.

We submit, finally, that the recent decision in *United States* v. *Universal C. I. T. Corp.*, 344 U. S. 218, in no way detracts from the correct-

ness of our position here. That case affirms the teaching that the problem of ascertaining "[w]hat Congress has made the allowable unit of prosecution" requires analysis of the necessarily "unique" legislative materials applicable in each particular case (p. 221). There, construing a criminal enforcement provision which simply made it unlawful "to violate any of the provisions of" stated sections of the Fair Labor Standards Act, this Court found in the "history of this legislation and the inexplicitness of its language" (p. 224)—and in the nature of the duties and the alternative methods of enforcement the Act prescribed—a congressional purpose to punish a "course of conduct" (*ibid.*) rather than an "employer's failure to perform his obligations as to each employee * * *" (p. 222). The Court pointed out that, had Congress intended the latter, "it could easily have said so" (*ibid.*).

Here, we believe, what Congress said and the regulations it has ratified and woven into the fabric of related enactments preclude treatment of failures to file 101 returns as a single criminal "course of conduct."

CONCLUSION

For the reasons stated above, it is submitted that the judgment dismissing the indictment in this case should be reversed.

Respectfully submitted.

WALTER J. CUMMINGS, Jr.,
Solicitor General.
H. BRIAN HOLLAND,
Assistant Attorney General.
MARVIN E. FRANKEL,
ELLIS N. SLACK,
MEYER ROTHWACKS,
JOSEPH M. HOWARD,
Special Assistants to the Attorney General.

FEBRUARY 1953.

APPENDIX A

18 U. S. C.:

Sec. 3731. [As amended by the Act of May 24, 1949, c. 139, 63 Stat. 89, Sec. 58].

APPEAL BY UNITED STATES

An appeal may be taken by and on behalf of the United States from the district courts direct to the Supreme Court of the United States in all criminal cases in the following instances:

From a decision or judgment setting aside, or dismissing, any indictment or information, or any count thereof, where such decision or judgment is based upon the invalidity or construction of the statute upon which the indictment or information is founded.

* * * * *

Internal Revenue Code:

SEC. 54. RECORDS AND SPECIAL RETURNS.

(a) *By Taxpayer.*—Every person liable to any tax imposed by this chapter or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

* * * * *

SEC. 62. RULES AND REGULATIONS.

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter.

SEC. 145 [as amended by SEC. 5 (c), Current Tax Payment Act of 1943, c. 120, 57 Stat. 126]. PENALTIES.

(a) *Failure to File Returns, Submit Information, or Pay Tax.*—Any person required under this chapter to pay any estimated tax or tax, or required by law or regulations made under authority thereof to make a return or declaration, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any estimated tax or tax imposed by this chapter, who willfully fails to pay such estimated tax or tax, make such return or declaration, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000.00 or imprisoned for not more than one year, or both, together with the costs of prosecution.

* * * * * *

SEC. 147 [as amended by Sec. 202 (c) (3), Revenue Act of 1948, c. 168, 62 Stat. 110]. INFORMATION AT SOURCE.

(a) *Payments of $600 or more.*—All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, and employers, making payment to another person, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments described in section 148 (a) or 149) of $600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the

United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Commissioner, under such regulations and in such form and manner and to such extent as may be prescribed by him with the approval of the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

* * * * *

Treasury Regulations 111, promulgated under the Internal Revenue Code:

SEC. 29.147–1 [As amended by T. D. 5313, 1944 Cum. Bull. 308 and T.D. 5687, 1949–1 Cum. Bull. 9] RETURN OF INFORMATION AS TO PAYMENTS OF $600 ($500 FOR YEARS PRIOR TO 1948).

All persons making payment to another person of fixed or determinable income of $500 or more in any calendar year prior to 1948, and all persons making payment to another person of such income of $600 or more in any calendar year after 1947 must render a return thereof for such year on or before February 15 of the following year except as specified in sections 29.147–3 to 29.147–5, inclusive. A return shall be made in each case on Form 1099, accompanied by transmittal Form 1096 showing the number of returns filed, except that the return with respect to distributions to beneficiaries of a trust or of an estate shall be made on Form 1041 in lieu of Forms 1099 and 1096. Returns of information on Forms 1096, 1099, and 1099L should be filed with the Commissioner of Internal Revenue, Processing Division, C. C. Station,

Kansas City 2, Mo.[1] For place of filing Form 1041 see section 53. The street and number where the recipient of the payment lives should be stated, if possible. If no present address is available, the last known post-office address must be given. Although to make necessary a return of information the income must be fixed or determinable, it need not be annual or periodical. (See section 29.143–2.)

Sums paid in respect of life insurance, endowment, or annuity contracts which are required to be included in gross income under sections 29.22 (b) (1)–1, 29.22 (b) (2)–1, and 29.22 (b) (2)–2 come within the meaning of the term "fixed or determinable income" and are required to be reported in returns of information as required by this section, except that payments in respect of policies surrendered before maturity and lapsed policies need not be reported.

Fees for professional services paid to attorneys, physicians, and members of other professions come within the meaning of the term "fixed or determinable income" and are required to be reported in returns of information as required by this section.

For the purposes of a return of information, an amount is deemed to have been paid when it is credited or set apart to the taxpayer without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and which is made available

[1] Prior to the amendment which was published in the Federal Register on February 24, 1949 (T. D. 5687, 1949–1 Cum. Bull. 9, 32), the address of the Processing Division given in the regulation was "260 East One Hundred and Sixty-first Street, New York 51, N. Y."

to him so that it may be drawn at any time, and its receipt brought within his own control and disposition.[2]

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[2] The regulation was further amended in 1951 (T. D. 5859, 1951–2 Cum. Bull. 88), but the amendment has no bearing on the present case.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 442

THE UNITED STATES OF AMERICA,
Appellant,

vs.

JAMES J. CARROLL

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MISSOURI

STATEMENT OPPOSING JURISDICTION

MORRIS A. SHENKER,
Counsel for Appellee.

INDEX

Subject Index

Table of Cases Cited

Statutes and Other Authorities Cited

Form 1099
U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

UNITED STATES INFORMATION RETURN FOR CALENDAR YEAR 1950

INSTRUCTIONS TO PAYORS

Prepare one of these forms for each payee in accordance with the instructions on return Form 1096. **THIS FORM IS NOT REQUIRED WITH RESPECT TO WAGE PAYMENTS REPORTED ON FORM W-2a.**

Forward with return Form 1096 so as to reach the Commissioner of Internal Revenue, in care of Processing Division, C. C. Station, Kansas City 2, Missouri, on or before February 15, 1951.

Copy of this form as filed with the Government should be furnished to the employee whose income is reported in first column to assist him in preparing his income tax return.

(45)

TO WHOM PAID

1950

(Print full name and home address) (Show employee's social security number, if any. If employee is a married woman, name of husband should also be furnished)

KIND AND AMOUNT OF INCOME PAID

Salaries, Fees, Commissions, or Other Compensation. Do *not* include amount reported on Form W-2a	Interest on Notes, Mortgages, Etc.	Rents and Royalties	Annuities, Pensions, Alimony, and Other Fixed or Determinable Income	Foreign Items ($600 or more)	Dividends ($100 or more) (Total paid, including amounts claimed nontaxable)
	($600 or more aggregate amount of above items)				
$	$	$	$	$	$

16—62580-1

BY WHOM PAID
(Name and address)

(OVER)

APPENDIX 'B'

INTERNAL REVENUE SERVICE FORM 1099 FOR THE YEAR 1950

Form 1099
UNITED STATES
INTERNAL REVENUE
(Revised Feb., 1919)

REPORT OF INCOME OF $1,000 OR MORE PAID DURING THE CALENDAR YEAR 1918

SALARIES, WAGES, RENT, INTEREST, OR OTHER FIXED OR DETERMINABLE GAINS, PROFITS, AND INCOME

NAMES MUST BE PRINTED OR WRITTEN PLAINLY

BY WHOM PAID

NAME _____

ADDRESS _____

_____

INSTRUCTIONS

One of these forms must be filled in for each person to whom income, as described on this form, was paid during the calendar year 1918. The name and business address of the person or organization making the payments should be entered under the heading "By whom paid" and the name and home address (if an individual) or business address (if an organization) of the one to whom the income was paid should be entered under the heading "To whom paid."

These forms must be forwarded with return Form 1096 to the Commissioner of Internal Revenue, Sorting Division, Washington, D. C., on or before March 15, 1919.

Do not report on this form dividends on stock, interest on bonds of domestic or foreign corporations, or interest on bonds and other obligations of the United States or foreign countries. For further instructions see Form 1096.

TO WHOM PAID

NAME _____

ADDRESS _____
(Street and number or rural route)

_____
(Post Office and State)

If payee is an individual, is he married? _____ If not, is he head of a family? _____

KIND OF INCOME PAID	AMOUNT
Salaries, wages, fees, commissions, etc.	$
Rent	$
Interest on notes, mortgages, etc.	$
Premiums and annuities	$
_____	$

On the blank line above enter the kind and amount of any other fixed or determinable gains, profits, and income except as noted in instructions.

c2—8573

INTERNAL REVENUE SERVICE FORM 1099 FOR THE YEAR 1918

8

46

FORM 1096
U. S. Treasury Department
Internal Revenue Service

UNITED STATES ANNUAL INFORMATION RETURN 1950

SUMMARY OF REPORTS OF SALARIES OF $600 OR MORE, OTHER INCOME PAYMENTS OF $600 OR MORE, DIVIDEND PAYMENTS OF $100 OR MORE, AND DISTRIBUTIONS IN LIQUIDATION OF $600 OR MORE

(Name of payor of income)

(Date received)

(Street and number or rural route)

(City or town, postal zone number) (State)

INSTRUCTIONS

1. When and Where to File.—This return (Form 1096) must be used to summarize and transmit copies of Forms 1099 and 1099L, in accordance with the instructions hereon, and delivered together with such forms on or before February 15, 1951, to the Commissioner of Internal Revenue, in care of Processing Division, C. C. Station, Kansas City 2, Missouri.

2. General Rules for Form 1099.—Except as specified in Instruction 3, a separate information return on Form 1099 must be made by every individual, partnership, and corporation with respect to each individual to whom payments were made during the calendar year 1950 in the following amounts:

a. Salaries, wages, fees, commissions, and other compensation for personal services totaling $600 or more, to the extent not reported on Form W-2a or Form 1042. (See definition of compensation in paragraph 4, below.)

b. Interest, rent, premiums, annuities, royalties, or other fixed or determinable income totaling $600 or more.

c. Dividends (other than distributions in liquidation) totaling $100 or more.

3. Exclusions from Form 1099.—No report on Form 1099 is required in the following cases: (*a*) Wages reported on Form W-2a; (*b*) payments of any type to a corporation; (*c*) payments to a nonresident alien reported on Form 1042; (*d*) distributions or salaries to members of a partnership reported on Form 1065; (*e*) distributions to beneficiaries of trusts or estates reported on Form 1041; (*f*) rent paid by a tenant to a real estate agent; (*g*) payments made by a broker to his customers; and (*h*) interest on tax-free covenant bonds reported on Form 1012.

4. Compensation Defined.—Compensation for personal services to be reported on Form 1099 includes not only wages and salaries in the ordinary meaning of the terms but also other items such as (*a*) the value of living quarters or meals furnished in lieu of cash compensation for personal services, (*b*) traveling or other expense allowances for which the employee is not required to submit an itemized account showing that such allowances were ordinary and necessary expenses in the employer's business, and (*c*) insurance premiums which under section 29.165-6 of Regulations 111 are income to the employee for the year in which the insurance is purchased. Such items should be separately identified on Form 1099.

5. Effect of Form W-2a.—Where the aggregate compensation of an employee is $600 or more and a portion thereof is reported on Form W-2a, the remainder of the compensation must be reported on Form 1099, regardless of amount. For example, if the total compensation paid to an employee is $600 of which $400 is reported on Form W-2a, the remaining $200 must be reported on Form 1099.

6. Annuity Payments to be Reported.—Annuity payments shall be reported in an amount equal to 3 percent of the aggregate premiums or consideration paid for the annuity (whether or not paid during the taxable year) until the aggregate amount paid to, and not required to be included in the gross income of, the annuitant equals the aggregate premiums or consideration paid for such annuity; thereafter, the entire amount of the annuity payments shall be reported.

7. Foreign Items.—In the case of foreign items, i. e., interest upon the bonds of a foreign country or of a nonresident foreign corporation not having a fiscal or paying agent in the United States, or dividends upon the stock of such corporation, a report on Form 1099 shall be filed by the bank or collecting agent accepting the items for collection, if the amount paid to an individual (citizen or resident of the United States), a resident fiduciary, or a resident partnership any member of which is a citizen or resident, during the calendar year 1950 is $600 or more.

8. Nontaxable Distributions.—The reverse of this form should be used to explain dividend distributions made in the ordinary course of business (but not distributions in liquidation) which are considered by a corporation to be nontaxable or partly nontaxable to the shareholders. Such report should be filed not later than February 1, 1951.

9. Form 1099L—Distributions in Liquidation.—Every corporation making any distribution in liquidation of the whole or any part of its capital stock shall make a report on Form 1099L with respect to each shareholder to whom such distribution amounting to $600 or more was made during the calendar year 1950, unless such distribution is one with respect to which information is required to be filed pursuant to section 112(b)(6), 112(g), or 371 of the Internal Revenue Code and the regulations issued thereunder. A copy of the resolution of the board of directors authorizing payments in liquidation should be attached hereto.

10. Calendar Year Basis.—Reports on Forms 1099 and 1099L are required to be rendered on the basis of the calendar year even though the income tax return of the payor is filed on the basis of a fiscal year.

11. Verification.—Returns of individuals must be signed by the individual or his duly authorized agent. Returns of corporations, partnerships, etc., must be signed by an officer of the corporation or member of the partnership.

I hereby declare under the penalties of perjury that to the best of my knowledge and belief the accompanying reports on Form 1099 and Form 1099L, and/or the statements on the reverse of this form, including any accompanying schedules, constitute a true and complete return of payments of the above-described classes of income made by the person or organization named above during the calendar year 1950.

Number of reports on Form 1099 attached .....

Number of reports on Form 1099L attached .....

.....
(Signature)

.....
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